

2013-CI-05244

408TH JUDICIAL DISTRICT COURT

RACHEL GIRDAUSKAS VS LIBERTY LIFE ASSUR

DATE FILED: 03/28/2013

RACHEL GIRDAUSKAS
PLAINTIFF,

VS.

LIBERTY LIFE ASSURANCE
COMPANY OF BOSTON
Defendant

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IN THE DISTRICT COURT

____ JUDICIAL DISTRICT

BEXAR COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE COURT:

RACHEL GIRDAUSKAS, plaintiff, complains of LIBERTY LIFE ASSURANCE COMPANY OF BOSTON, defendant, and for cause of action shows:

I.

Plaintiff is RACHEL GIRDAUSKAS, an individual, residing in Bexar County, Texas. Defendant LIBERTY LIFE ASSURANCE COMPANY OF BOSTON is an insurance company organized under the laws of the state of Texas, and authorized to engage in the insurance business in Texas, having its principal place of business at P.O. Box 7213, London, KY, 40742. Citation may be served on the defendant by serving its agent for service CORPORATION SERVICE COMPANY, 211 E. 7th Street, Austin, Texas 78701. Plaintiff RACHEL

FILED
DONNA KAY MCKINNEY
DISTRICT CLERK
BEXAR COUNTY
13 MAR 28 PM 12:03
BY _____
DEPUTY

EXHIBIT

A

GIRDAUSKAS affirmatively pleads that discovery should be conducted in accordance with a discovery control plan under level two.

II.

The defendant issued a policy of insurance number CF3-850-275613-01, known as the Lowe's Companies Inc. LTD Policy.

III.

Plaintiff, RACHEL GIRDAUSKAS, is insured under this policy as the named insured.

IV.

The policy promises payment of disability benefits to any covered person for long term disability. A true and correct copy of the policy is in the possession of the Defendant at length.

V.

During the year 2011 RACHEL GIRDAUSKAS became totally disabled due to back problems and remains totally disabled.

VI.

At all times material, the policy issued by defendant as was in full force and effect. All conditions precedent to defendant's liability under the policy have occurred or have been performed.

PRIVATE PROCESS

Case Number: 2013-CI-05244



2013CI05244 S00001

RACHEL GIRDAUSKAS**VS.****LIBERTY LIFE ASSURANCE COMPANY OF BOSTO**

(Note: Attached Document May Contain Additional Litigants.)

IN THE DISTRICT COURT
408th JUDICIAL DISTRICT
BEXAR COUNTY, TEXAS**CITATION**

"THE STATE OF TEXAS"

Directed To: LIBERTY LIFE ASSURANCE COMPANY OF BOSTON

BY SERVING ITS REGISTERED AGENT, CORPORATION SERVICE COMPANY

You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you." Said petition was filed on the 28th day of March, 2013.

ISSUED UNDER MY HAND AND SEAL OF SAID COURT ON THIS 2ND DAY OF APRIL A.D., 2013.

PLAINTIFF'S ORIGINAL PETITION

JOHN DAVID WENNERMARK
ATTORNEY FOR PLAINTIFF
1924 N MAIN AVE
SAN ANTONIO, TX 78212-3942



Donna Kay McKinney
Bexar County District Clerk
101 W. Nueva, Suite 217
San Antonio, Texas 78205

By: *Maria Jackson*, Deputy**OFFICER'S RETURN**

I received this citation on _____ at _____ o'clock ____M. and: () **executed** it by delivering a copy of the citation with the date of delivery endorsed on it to the defendant, _____ in person on the _____ at _____ o'clock ____M. at: _____ or () **not executed** because _____ Fees: _____ Badge/PPS #: _____
Date certification expires: _____ County, Texas

By: _____

OR: VERIFICATION OF RETURN (If not served by a peace officer) SWORN TO this _____

NOTARY PUBLIC, STATE OF TEXAS

OR: My name is _____, my date of birth is _____, and my address is _____ (County).
I declare under penalty of perjury that the foregoing is true and correct. Executed in _____ County, State of Texas, on the _____ day of _____, 20____.

EXHIBIT**B**

Declarant

ORIGINAL (DK002)



Bexar County

District Clerk/County Clerk Search

Full Case Information

Case Summary

Case Information for Cause #: 2013CI05244

RACHEL GIRDAUSKAS vs LIBERTY LIFE ASSURANCE COMPANY OF BOSTON

Cause No. : 2013CI05244
Name : RACHEL GIRDAUSKAS
Business Name :
Litigant Type : PLAINTIFF
Date Filed : 03/28/2013
Docket Type : INSURANCE
Case Status : PENDING
Court : 408

Information as of: 04/29/2013 04:39:52 PM

Case History

Currently viewing 1 through 5 of 5 records.

Type/Sequence	Date Filed	Description
P00001	3/28/2013	PLAINTIFF'S ORIGINAL PETITION
P00002	3/28/2013	CIVIL CASE INFORMATION SHEET
P00003	3/28/2013	REQUEST FOR CIT PPS
P00004	3/28/2013	SERVICE ASSIGNED TO CLERK 1
S00001	4/2/2013	CITATION LIBERTY LIFE ASSURANCE COMPANY OF BOSTON ISSUED: 4/2/2013 RECEIVED: 4/8/2013 EXECUTED: 4/12/2013 RETURNED: 4/19/2013

CAUSE NO. 2013-CI-05244

RACHEL GIRDAUSKAS,

Plaintiff,

vs.

LIBERTY LIFE ASSURANCE COMPANY
OF BOSTON,

Defendant.

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IN THE DISTRICT COURT OF

408th JUDICIAL DISTRICT

BEXAR COUNTY, TEXAS

**DEFENDANT'S NOTICE OF FILING NOTICE OF
REMOVAL OF ACTION TO FEDERAL COURT**

Pursuant to Title 28 of the United States Code, Section 1446(d), Defendant Liberty Life Assurance Company of Boston ("Defendant"), hereby gives notice of the filing of a Notice of Removal, removing this action from this Court to the United States District Court for the Western District of Texas. A copy of Defendant's Notice of Removal, filed this day in federal court, is attached hereto as Exhibit "1."

No further action need be taken by this Court, other than forwarding a complete copy of the record of this action to the United States District Court, unless and until this action is remanded to this Court. 28 U.S.C. § 1446(d).

Respectfully submitted this 3rd day of May 2013.

Respectfully submitted,

JACKSON LEWIS LLP
500 N. Akard, Suite 2500
Dallas, Texas 75201
PH: (214) 520-2400
FX: (214) 520-2008

By: _____



Iwana Rademaekers, Esq.
State Bar No. 16452560

ATTORNEYS FOR DEFENDANT

EXHIBIT

D

CERTIFICATE OF SERVICE

I certify that the foregoing pleading was forwarded to the following counsel of record, via certified mail, return receipt requested on the 3rd day of May, 2013, as follows:

John D. Wennermark
Law Offices of John D. Wennermark
1924 N. Main Avenue
San Antonio, TX 78212

A handwritten signature in blue ink, appearing to read "D. Wennermark", is written above a horizontal line.

ONE OF COUNSEL

VII.

Benefits are due to plaintiff under the policy. According to the terms of the policy, these benefits were paid to Plaintiff for a period of time and then discontinued. Plaintiff is still due such payments. As a result, plaintiff is also entitled to interest on the insurance benefits at the appropriate rate.

VIII.

Plaintiff is also entitled to recover statutory penalties of 18 percent per year of the amount payable under the policy, because the defendant has not paid plaintiff's claim, even though Plaintiff is still totally disabled.

IX.

Because of the conduct of the defendant, plaintiff has been compelled to engage the services of an attorney to prosecute this action against the defendant. Plaintiff is entitled to recover a reasonable sum for the necessary services of plaintiff's attorney in the preparation for trial of this action, including any appeals to the Court of Appeals or the Texas Supreme Court.

WHEREFORE, plaintiff requests that the defendant be cited to appear and answer, and that on final trial plaintiff have the following:

1. Judgment against the defendant for the benefits payable under the insurance policy made the basis of this suit which exceeds the minimum jurisdiction of the court.
2. Prejudgment interest as provided by law.

3. The sum of 18 percent per annum on the amount of policy benefits, as a statutory penalty on account of the defendant's violation of Insurance Code Article 21.55.
4. Attorney's fees.
5. Postjudgment interest as provided by law.
6. Costs of suit.
7. Such other and further relief to which plaintiff may be justly entitled.

Respectfully submitted,

LAW OFFICES OF
JOHN D. WENNERMARK

BY: _____
JOHN D. WENNERMARK
Texas Bar No. 21177000
1924 N. Main Avenue
San Antonio, TX 78212
Phone: (210) 226-6262
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Attorney for RACHEL GIRDAUSKAS